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First Named Inventor Tatta

Group Art Unit 3632

Examiner Name K. H. Chan

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ENCLOSURES (check all that apply)

☐ Fee Transmittal Form

☐ Fee Attached

☐ Amendment / Reply

☐ After Final

☐ Affidavits/declaration(s)

☐ Extension of Time Request

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☐ Information Disclosure Statement

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under 37 CFR 1.52 or 1.53

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant's Patent Application of:
Tatta

Examiner: **K. H. Chan**

Serial No.: **10/691,718**

Group Art Unit: **3632**

Filed: **October 22, 2003**

Date: **May 16, 2007**

**For: MOUNTING DEVICE AND METHOD
FOR ATTACHING AN ELECTRONIC TOLL
PASS ASSEMBLY TO A VEHICLE
WINDSHIELD**

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SUPPLEMENTAL APPEAL BRIEF OF APPELLANT

Sir:

The Applicant having previously filed a Notice Of Appeal for the above-captioned application, herein timely files this Appeal Brief in accordance with 37 C.F.R. 41 et seq.

I. REAL PARTY IN INTEREST [37 CFR §41.37(c)(1)]

The subject application is not assigned. As such, the Real Party in Interest is the Applicant, Andre Tatta.

II. RELATED APPEALS AND INTERFERENCES [37 CFR §41.37(c)(2)]

No other related application is currently subject to an Appeal or Interference.

III. STATUS OF CLAIMS [37 CFR §41.37(c)(3)]

The status of the pending claims is as follows

Claims 1-15 were filed with the original application.

Claim 10 has been cancelled.

Claims 1-9 and 11-15 are pending in this application.

Claims 1-4, 6-9 and 11-15 stand as finally rejected by the Examiner.

Claim 5 is objected to.

Claims 1-9 and 11-15 are the appealed claims.

IV. STATUS OF THE AMENDMENTS [37 CFR §41.37(c)(4)]

The last amendment filed by the Applicant on October 05, 2006 was entered by the Examiner. No other amendments were filed.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER [37 CFR §41.37(c)(5)]

The subject application has two pending independent claims, which are Claim 1 and Claim 9. All other pending claims are dependent claims.

Claim 1 sets forth a mounting device (*20, Fig. 2*) for mounting an electronic toll payment pass (*14, Fig. 2*) to the interior of a contoured windshield (*12, Fig. 2*) and diminishing the visibility of the electronic toll pass (*14*) through the windshield (*12*). (See **preamble of Claim 20**) The claimed mounting device (*20*) includes a flexible support substrate (*24, Fig. 2*) having a face surface (*23, Fig. 2*) and an opposite back surface . The flexible support substrate (*24*) conforms to the interior of the contoured windshield (*12*) (See *Specification, page 11, lines 12-17*).

A display image (*22, Fig. 2*) is provided on the face surface (*23*) of the flexible support substrate (*24*). (See *Specification, page 11, lines 19-20*) An adhesive coating is present on at least part of the display image (*22*). (See *Specification, page 12, lines 3-7*) This enables the display image (*22*) to be selectively attached directly to the contoured windshield (*12*) of the vehicle as the flexible support substrate (*24*) conforms to the contoured windshield (*12*). (See

Specification, page 12, lines 8-12)

At least one fastener (28, *Fig. 2*) is provided on the back surface of the flexible support substrate (24). The fastener (28) enables the electronic toll payment pass (14) to be selectively mounted to the back surface of the flexible support substrate (24). (*See specification, page 13, lines 17-22*)

By adhering the display image (22) against the windshield (12), the display image (22) is viewable through the windshield (22). Consequently, when the electronic toll payment pass (14) is attached to the back of the flexible support substrate (24), the visibility of the electronic toll payment pass (14) is greatly diminished. (*See Specification, page 14, lines 10-16*).

Claim 9 sets forth a method of mounting an electronic toll payment pass (14) to a contoured windshield (12) of a vehicle in a manner that diminishes the visibility of the electronic toll payment pass (14) through the contoured windshield (12). (*See preamble of Claim 20*) In the claimed method, a flexible support substrate (24, *Fig. 2*) is provided that has a face surface (23, *Fig. 2*). The flexible support substrate (24) includes a display image (22, *Fig. 2*) that is visible when viewing the face surface (23).

The mounting structure (20) is adhesively attached to the contoured windshield (12) of the vehicle. (*See Specification, page 12, lines 3-13*) The face surface (23) of the mounting structure (20, *Fig. 2*) abuts against the contoured windshield (12) as the flexible support substrate (24) conforms to the contoured windshield (12). (*See Specification, page 11, lines 12-17*).

An electronic toll payment pass (14) is attached to the back surface (23) of the flexible support substrate (24). (*See specification, page 13, lines 17-22*). The flexible support substrate (24) is interposed between the contoured windshield (12) and the electronic toll payment pass (14), thereby obstructing the visibility of the electronic toll payment pass (14). (*See Specification, page 14, lines 10-16*).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL [37 CFR §41.37(c)(6)]

The grounds of rejection to be reviewed on appeal are as follows:

1. - Claims 1, 3, 8, 9, 13 and 15 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab.
2. - Claims 2, 6 and 11 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of US Patent No 5,688,579 to Konsti.
3. - Claims 7 and 12 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of US Patent No 5,688,579 to Konsti and U.S. Patent No. 4,848,542 to Burnette.
4. - Claim 4 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of U.S. Patent No. 4,848,542 to Burnette.
5. - Claim 14 stands rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of U.S. Patent No. 5,151,593 to Domenig.
6. - Claims 1-4, 6-9 and 11-15 should not stand rejected because the Examiner has no proper motivation for the combinations made, thereby producing a wrongful hindsight reconstruction.

VII. ARGUMENTS. [37 CFR §41.37(c)(7)]

GROUND 1 - Whether the Examiner erred in finally rejecting Claims 1, 3, 8, 9, 13 and 15 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab

The rejected claims contain two independent claims, which are Claim 1 and Claim 9. Both Claim 1 and Claim 9 are fully distinguishable over the combined references, as is explained below.

Claim 1 sets forth a mounting device for mounting an electronic toll payment pass to the interior of a contoured windshield and diminishing the visibility of the electronic toll pass through the windshield. The claimed device includes a flexible support substrate having a face surface and a back surface. The flexible support substrate conforms to the interior of the contoured windshield.

A display image is provided on the face surface of the flexible support substrate. An adhesive coating is present on at least part of the display image. This enables the display image to be selectively attached directly to the contoured windshield of the vehicle as said flexible support substrate conforms to the contoured windshield.

At least one fastener is provided on the back surface of the flexible support substrate. The fastener enables the electronic toll payment pass to be selectively mounted to the back surface of said flexible support substrate.

By adhering the display image against the windshield, the display image is viewable through the windshield. Consequently, when the electronic toll payment pass is attached to the back of the flexible support substrate, the visibility of the electronic toll payment pass is greatly diminished.

The primary Friedman patent discloses a shield for an electronic toll payment pass that can be used to selectively stop the electronic payment pass from working when passing through a toll. As is specifically stated in Friedman in Column 4, lines 29-36 *“housing member 22 will be constructed of a material capable of shielding the signal emitted by transponder 10”*. The material can be plastic impregnated with metal to provide the plastic with shielding properties. Alternatively, the housing can be made of metal. See Friedman, column 4, line 36.

It will be understood the plastic impregnated with metal sufficient enough to block a strong radio signal is going to be rather thick and rigid, Furthermore, and protective shield made of metal would also be rigid.

The teaching of the Friedman patent teaches away from the present invention. The present invention utilizes a thin flexible support substrate that conforms to the shape of the windshield. Furthermore, as is stated in the original application, page 14, last paragraph:

The flexible support substrate 24 is only a thin opaque sheet of paperboard or plastic. As such, the presence of the flexible support substrate 24 between the windshield 12 and the housing of the electronic toll payment pass 14 has a negligible effect upon the functionality of the electronic toll payment pass 14.

It can therefore be seen that the purpose of the present invention is merely to prevent and electronic toll pass from being seen without stopping the electronic toll pass from working properly.

As applied to the specific wording of Claim 1, it can be seen that the Friedland patent does not disclose a device for holding a toll payment pass that contains a display image.

The Friedland patent does not disclose a holder for a toll payment pass that has a flexible support substrate.

Lastly, the Friedland patent does not disclose a holder for a toll payment pass where adhesive is used to attach the display image directly to the windshield.

The secondary Kassab patent discloses a static cling intermediary that enables stickers with permanent adhesive to be temporally applied to a glass window. The Kassab patent make no disclosure concerning a structure that cam used to hold an electronic toll payment pass.

It can be seen that, like the Friedland patent, the Kassab patent does not disclose a device for holding a toll payment pass that contains a display image. The Kassab patent only discloses transparent static cling substrates.

Likewise, the Kassab patent does not disclose a display image that attaches to both a window and an electronic toll payment pass.

Lastly, like the Friedland, the Kassab patent does not disclose a holder for a toll payment pass where adhesive is used to attach the display image directly to the windshield.

In combination, it is clear that the Friedland patent and the Kassab patent all fail to disclose or suggest a holder for a toll payment pass that is designed to diminish the visibility of the toll payment pass without affecting the operation of the electronic toll payment pass. The combined prior art references all fail to disclose or suggest a device for holding a toll payment pass that uses a thin, flexible substrate upon which a display image is printed. Furthermore, the combined Friedland and Kassab patents fail to disclose or suggest a toll payment pass where adhesive is used to attach the display image directly to the windshield.

Since these features are specifically claimed in Claim 1, it is clear that the combined references do not disclose the matter of Claim 1. It is therefore requested that the 35 USC 103 rejection as applied to Claim 1 and its dependent claims be withdrawn.

Claim 9

Claim 9 sets forth a method of mounting an electronic toll payment pass to a contoured windshield of a vehicle in a manner that diminishes the visibility of the electronic toll payment pass through the contoured windshield. In the claimed method, a flexible support substrate is provided that has a face surface and a back surface. The flexible support substrate includes a display image that is visible when viewing the face surface.

The mounting structure is adhesively attached to the contoured windshield of the vehicle.

The face surface of the mounting structure abuts against the contoured windshield as the flexible support substrate conforms to the contoured windshield.

An electronic toll payment pass is attached to the back surface of the flexible support substrate. The flexible support substrate is interposed between the contoured windshield and the electronic toll payment pass, thereby obstructing the visibility of the toll payment pass.

As has been previously explained, in combination it is clear that the Friedland patent and the Kassab patent fail to disclose or suggest a holder for a toll payment pass that is designed to diminish the visibility of the toll payment pass without affecting the operation of the electronic toll payment pass. The combined prior art references all fail to disclose or suggest a device for holding a toll payment pass that uses a thin, flexible substrate upon which a display image is printed. Furthermore, the combined Friedland and Kassab patents fail to disclose or suggest a toll payment pass where adhesive is used to attach the display image directly to the windshield.

As applied to the specific wording of Claim 9, it can be seen that the combined Friedland and Kassab patents do not disclose a method of providing a toll payment pass holder that contains a display image. The combined Friedland and Kassab patents do not disclose a holder for a toll payment pass that has a flexible support substrate. Lastly, the combined Friedland and Kassab patents do not disclose a holder for a toll payment pass where adhesive is used to attach a flexible mounting substrate directly to the windshield.

Since these features are specifically claimed in Claim 9, it is clear that the combined references do not disclose the methodology set forth in Claim 9. It is therefore requested that the 35 USC 103 rejection as applied to Claim 9 and its dependent claims be withdrawn.

GROUND 2 - Whether the Examiner erred in finally rejecting Claims 2, 6 and 11 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of US Patent No 5,688,579 to Konsti.

Claim 2 and 6 depend from Independent Claim 1. Claim 11 depends from Independent Claim 9.

Claim 1 is distinguishable over the combined Friedland and Kassab patents for the reasons previously presented. However, in this set of rejections, the Examiner additionally cites the Konsti patent. The Konsti patent discloses a mounting composite that is used to mount sheet material (paper) to a vertical wall. See Konsti Abstract. However, it is obvious that the Konsti patent makes no disclosure concerning the mounting of an electronic toll payment pass to a vehicle windshield. Consequently, the Konsti patent does not address the deficiencies of the Friedland patent and the Kassab patent as applied to independent Claim 1 and Independent Claim 9.

More specifically, the combination of the Friedland, Kassab and Konsti patents all fail to disclose or suggest a holder for a toll payment pass that is designed to diminish the visibility of the toll payment pass without affecting the operation of the electronic toll payment pass. The combined prior art references all fail to disclose or suggest a device for holding a toll payment pass that uses a thin, flexible substrate upon which a display image is printed. Furthermore, the combined prior art patents fail to disclose or suggest a toll payment pass where adhesive is used to attach the display image directly to the windshield.

Claim 2, 6 and 11 are therefore clearly distinguishable over the combined prior art references since these claims depend from and further define allowable base claims.

GROUND 3. - Whether the Examiner erred in rejecting Claims 7 and 12 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of US Patent No 5,688,579 to Konsti and U.S. Patent No. 4,848,542 to Burnette.

Claim 7 depends from Independent Claim 1. Claim 12 depends from Independent Claim 9.

Claim 1 is distinguishable over the combined Friedland, Kassab and Konsti patents for the reasons previously presented. However, in this set of rejections, the Examiner additionally cites the Burnette patent. The Burnette patent discloses a double-side suction cup holder for a

bathroom mirror. It is obvious that the Burnette patent makes no disclosure concerning the mounting of an electronic toll payment pass to a vehicle windshield. Consequently, the Burnette patent does not address the deficiencies of the Friedland, Kassab and Konsti patents as applied to independent Claim 1 and Independent Claim 9.

More specifically, the combination of the Friedland, Kassab, Konsti and Burnette patents all fail to disclose or suggest a holder for a toll payment pass that is designed to diminish the visibility of the toll payment pass without affecting the operation of the electronic toll payment pass. The combined prior art references all fail to disclose or suggest a device for holding a toll payment pass that uses a thin, flexible substrate upon which a display image is printed. Furthermore, the combined prior art patents fail to disclose or suggest a toll payment pass where adhesive is used to attach the display image directly to the windshield.

Claim 7 and 12 are therefore clearly distinguishable over the combined prior art references since these claims depend from and further define allowable base claims.

GROUND 4. - Whether the Examiner erred in rejecting Claim 4 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of U.S. Patent No. 4,848,542 to Burnette.

Claim 4 depends from independent Claim 1. Claim 1 is distinguishable over the combined Friedland, Kassab and Burnette patents for the reasons previously present in reply to Ground 3 of the arguments.

In view of the arguments that were presented, Claim 4 is believed to be allowable since it depends from, and further defines, an independent claim that is distinguishable from the cited prior art.

GROUND 5. - Whether the Examiner erred in rejecting Claim 14 under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6, 127,938 to Friedman in view of U.S. Patent No. 6,258,200 to Kassab and in further view of U.S. Patent No. 5,151,593 to Domenig.

Claim 14 depends from Independent Claim 9.

Claim 9 is distinguishable over the combined Friedland and Kassab patents for the reasons previously presented. However, in this set of rejections, the Examiner additionally cites the Domenig patent. The Domenig patent discloses a kitchen cabinet structure that hangs on the wall using Velcro. It is obvious that the Domenig patent makes no disclosure concerning the mounting of an electronic toll payment pass to a vehicle windshield. Consequently, the Domenig patent does not address the deficiencies of the Friedland patent and the Kassab patent as applied to independent Claim 9.

More specifically, the combination of the Friedland, Kassab and Domenig patents all fail to disclose or suggest a holder for a toll payment pass that is designed to diminish the visibility of the toll payment pass without affecting the operation of the electronic toll payment pass. The combined prior art references all fail to disclose or suggest a device for holding a toll payment pass that uses a thin, flexible substrate upon which a display image is printed. Furthermore, the combined prior art patents fail to disclose or suggest a toll payment pass where adhesive is used to attach the display image directly to the windshield.

Claim 14 is therefore clearly distinguishable over the combined prior art references since these claims depend from and further define allowable base claims.

GROUND 6. -Claims 1-4, 6-9 and 11-15 should not stand rejected because the Examiner has no proper motivation for the combinations made, thereby producing a wrongful hindsight reconstruction.

The Examiner's rejections, based upon the cited references, require a selective combination of various elements before the references can be applied to the pending claims. The

law is clear. When prior art references require selective combination to render the claims of an application obvious, there must be some reason for the combination other than hindsight gleaned from the invention itself. See *Interconnect Planning Corp. v. Feil* 774 F.2nd 1138, 227 USPQ 543 (Fed Cir 1985), and *Ashland Oil, Inc.* 776 F.2nd 281, 227 USPQ 657 (Fed Cir 1985).

Something in the prior art as a whole must suggest the desirability and thus the obviousness of making the combination. See *Lindermann Maschinenfabrik GmbH v. American Hoist and Derrick Co.* 730 F.2nd 1452, 221 USPQ 481 (Fed Cir. 1984), and *Uniroyal Inc. v. Rudkin-Wiley Corp.* 5 USPQ 2nd 1434 (1988).

As the court stated in *Uniroyal*, 837 F.2nd at 1051, 5 USPQ2nd at 1438, "it is impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention." In regard to the matter set forth in both Claim 1 and Claim 9, the prior art cited simply does not disclose any device or method where a flexible substrate, having a display image printed upon it, is used to hold an electronic toll payment pass in place while shielding that electronic toll payment pass from sight. Since nothing in the cited art suggests what was claimed, the Examiner's combination is without motivation and is wrongful.

CONCLUSION

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §41.37 et seq. The Examiner's 35 U.S.C. §103 rejections are not supported by the cited references. The Board is therefore requested to cause the Examiner to remove the rejections and allow the remaining pending claims.


Respectfully Submitted,

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VIII. CLAIMS APPENDIX [37 CFR 41.47(c)(8)]

The pending claims stand as follows:

1. A mounting device for mounting an electronic toll payment pass to the interior of a contoured windshield and diminishing the visibility of the electronic toll pass through the windshield, said device comprising:

a flexible support substrate having a face surface and a back surface, said flexible support substrate being conformable to the interior of the contoured windshield;

a display image covering said face surface of said flexible support substrate;

an adhesive coating on at least part of said display image, wherein said adhesive coating enables said display image to be selectively attached directly to the contoured windshield of the vehicle as said flexible support substrate conforms to the contoured windshield; and

at least one fastener coupled to said back surface of said flexible support substrate that enables the electronic toll payment pass to be selectively mounted to said back surface of said flexible support substrate.

2. The device according to Claim 1, wherein said flexible support substrate is opaque and prevents the electronic toll

payment pass from being viewed through the windshield.

3. The device according to Claim 1, wherein said display image is printed on said face surface of said flexible support substrate.

4. The device according to Claim 1, wherein said display image is adhered to said face surface of said flexible support structure.

5. The device according to Claim 1, wherein said flexible support substrate has walls that extend from said back surface, wherein the electronic toll payment pass is disposed between said walls when mounted to said back surface of said flexible support substrate.

6. The device according to Claim 1, wherein said flexible support substrate is made from a paperboard material.

7. The device according to Claim 6, wherein said face surface of said flexible support substrate is laminated.

8. The device according to Claim 1, wherein said at least one fastener includes at least one area of hook and loop fastening material.

9. A method of mounting an electronic toll payment pass to a contoured windshield of a vehicle in a manner that diminishes the visibility of the electronic toll payment pass through the contoured windshield, said method comprising the steps of:

providing a flexible support substrate having a face surface and a back surface, wherein said flexible support substrate includes a display image that is visible when viewing said face surface;

adhesively attaching the mounting structure to said contoured windshield of the vehicle, wherein said face surface abuts against said contoured windshield and said flexible support substrate conforms to said contoured windshield; and

attaching the electronic toll payment pass to the back surface of said flexible support substrate, wherein said flexible support substrate is interposed between the contoured windshield and the electronic toll payment pass.

10. (Cancelled)

11. The method according to Claim 9 wherein said flexible support substrate is paperboard.

12. The method according to Claim 11, further including the step of laminating said flexible support substrate.

13. The method according to Claim 9, wherein said step of adhesively attaching the mounting structure to the windshield of the vehicle includes applying adhesive to said face surface so that all of said face surface adheres to the contoured windshield.

14. The method according to Claim 9, wherein said step of attaching the mounting structure to the contoured windshield of the vehicle includes placing double-sided tape between the contoured windshield and the face surface of the mounting structure.

15. The method according to Claim 9, wherein said step of attaching the electronic toll payment pass to the back surface of the mounting structure includes the substeps of:

providing areas of hook and loop material on both the back surface of the mounting structure and the electronic toll payment pass; and

connecting the electronic toll payment pass to the back surface of the mounting structure by interconnecting said areas of hook and loop material.

IX. EVIDENCE APPENDIX [37 CFR 41.37(c)(1)(ix)].

There is no evidence submitted under 37 CFR 1.130, 1.131 or 1.132 or any other evidence relied upon by the applicant

X. RELATED DECISION APPENDIX [37 CFR 41.37(c)(1)(x)].

There are no decisions by a court or the Board relevant to this appeal.